

No. 19673 !

*See filed
Vol. 3332*

United States
COURT OF APPEALS
for the Ninth Circuit

SIMPSON TIMBER CO. and
GRACE LINE, INC.,

Appellants,

v.

EZRA PARKS,

Appellee.

SIMPSON TIMBER CO.,

Appellant,

v.

GRACE LINE, INC., and
BRADY-HAMILTON STEVEDORE CO.

Appellees.

PETITION FOR REHEARING OF APPELLEE
BRADY-HAMILTON STEVEDORE CO.

Appeal from the United States District Court
For the District of Oregon

GRAY, FREDRICKSON & HEATH,
NATHAN J. HEATH,

421 S. W. Sixth Avenue, Portland, Oregon 97204,
Attorneys for Brady-Hamilton Stevedore Co.

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Appellee Brady-Hamilton Stevedore Co. petitions
the Court for rehearing upon the ground the Court

erred in reversing the decree in its favor on the indemnity claim of Simpson Timber Co.

The opinion of the majority states (Op. 10) that the district judge's conclusions were derived in part from accepting the jury's factual determinations. With respect to Brady-Hamilton the trial judge said (R. 143) (1) Simpson was an "utter stranger" to stevedore, and (2) stevedore had no knowledge or opportunity to learn of the latent condition. The Findings of Fact and Conclusions of Law were consistent (R. 165, 166). These determinations had nothing whatsoever to do with any conclusions reached by the jury. They fully supported the judgment in favor of Brady-Hamilton.

The trial judge's determination was clearly based on substantial evidence. This Court has not suggested that such determination was clearly erroneous. *McAllister v. United States*, 348 U.S. 19, 75 S. Ct. 6, 99 L. Ed. 20 (1954).

The judgment in favor of Appellee Brady-Hamilton Stevedore Co. should be re-instated.

Respectfully submitted,

GRAY, FREDRICKSON & HEATH
NATHAN J. HEATH
Attorneys for Appellee
Brady-Hamilton Stevedore Co.

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this petition, I have examined Rule 23 of the United States Court of Appeals for the Ninth Circuit and that in my opinion the foregoing petition is in full compliance with that rule. I further certify that this petition is in my judgment well founded and is not interposed for delay.

NATHAN J. HEATH

Of Attorneys for Petitioner
Brady-Hamilton Stevedore Co.

